

JOHN BRADY and FRANCES  
MERGLIANO,

Defendants Below,  
Appellants,

WELLS FARGO FINANCIAL  
BANK, a South Dakota State  
Chartered Bank,

Plaintiff Below,  
Appellee.

Court Below—Superior Court  
of the State of Delaware in and  
for Sussex County

C.A. No. S10A-11-008

Decided: July 11, 2012

## ORDER

(1) The appellants, John Brady and Frances Mergliano (hereinafter “Brady and Mergliano”), filed this appeal from a Superior Court decision affirming a default judgment entered by the Court of Common Pleas in favor of the appellee, Wells Fargo Financial Bank (hereinafter “Wells Fargo”). For the reasons that follow, we conclude that the Superior Court’s judgment must be affirmed.

(2) The record reflects that on August 5, 2009, Wells Fargo sued Brady and Mergliano in the Court of Common Pleas for the balance owed on a joint credit card Wells Fargo issued to Brady and Mergliano. Brady and Mergliano filed an answer on October 2, 2009, denying any knowledge of the credit card account.

(3) On October 21, 2009, Wells Fargo filed a request for admissions attaching twenty-three account statements dated from March 2007 to December 2008 addressed to Brady and Mergliano at the two addresses where they lived during that period of time. In response to the requests for admissions, Brady and Mergliano stated, without further explanation, that they could not specifically admit or deny any of the matters for which admissions were requested.

(4) On June 8, 2010, Wells Fargo filed a second request for admissions attaching a payment history and copies of Brady's signed checks dated January, February and March 2008 making payments on the account. Neither Brady nor Mergliano responded to Wells Fargo's second request for admissions within the time allotted.

(5) On August 5, 2010, after the expiration of Brady's and Mergliano's deadline for filing a response to the second request for admissions, Wells Fargo filed a motion for summary judgment with affidavit

under Court of Common Pleas Civil Rule 56 (hereinafter “Rule 56”). The motion for summary judgment was noticed for a hearing on September 2, 2010.

(6) On August 9, 2010, Brady and Mergliano filed an objection to the motion for summary judgment. Brady and Mergliano contended that the motion for summary judgment was premature because it was filed before an August 27, 2010 discovery cut-off deadline previously set by the Court of Common Pleas. Other than the objection, Brady and Mergliano did not respond to the motion for summary judgment, and neither Brady nor Mergliano appeared at the September 2, 2010 hearing in the Court of Common Pleas.

(7) The September 2, 2010 hearing on the summary judgment motion was held before a Commissioner. After the hearing, the Commissioner issued a report dated September 2, 2010 recommending that the motion should be granted and that judgment should be entered for Wells Fargo and against Brady and Mergliano.

(8) Brady and Mergliano appealed the Commissioner’s recommendation to a judge of the Court of Common Pleas. On appeal, Brady and Mergliano argued that they had no duty to appear at the

September 2, 2010 hearing because the Court of Common Pleas had not yet ruled on their objection to the summary judgment motion.

(9) After reviewing the matter *de novo*, a judge of the Court of Common Pleas issued a decision accepting the Commissioner's September 2, 2010 recommendation and entered default judgment in favor of Wells Fargo. In its November 23, 2010 decision, the Court of Common Pleas found:

[Brady's and Mergliano's] obligation to appear at the hearing on [Wells Fargo's motion for summary judgment] was not extinguished by the mere act of making an objection that the [m]otion was premature. Such objections are considered by the Court at the hearing after oral argument. [Brady's and Mergliano's] failure to appear on the hearing date is, therefore, inexcusable.<sup>1</sup>

(10) Brady and Mergliano appealed the Court of Common Pleas' November 23, 2010 decision to the Superior Court. On appeal, Brady and Mergliano asked the Superior Court to find that their absence from the hearing was excusable because the Court of Common Pleas had not yet ruled on their objection to Wells Fargo's summary judgment motion.

(11) Following briefing by the parties, the Superior Court, by order dated November 16, 2011, concluded that the Court of Common Pleas did

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<sup>1</sup> *Wells Fargo Fin. Bank v. Brady*, Del. Com. Pl., C.A. No. CPU6-09-002342 (Nov. 23, 2010), *quoted in Brady v. Wells Fargo Bank*, 2011 WL 5626626, at \*2 (Del. Super.).

not abuse its discretion when entering a default judgment against Brady and Mergliano. When affirming the judgment of the Court of Common Pleas, the Superior Court found as follows:

[Brady and Mergliano] received written notice of the hearing on Wells Fargo's Motion for Summary Judgment. [Brady and Mergliano] do not allege they received any indication from the trial court that the hearing would not be held. Moreover, the record reflects that [Brady and Mergliano] failed to counter Wells Fargo's Motion for Summary Judgment with an affidavit of their own as required by the Rules under the circumstances.<sup>2</sup>

This appeal followed.

(12) In an appeal from the Court of Common Pleas to the Superior Court, the standard of review is whether there is legal error and whether the factual findings made by the trial judge are sufficiently supported by the record and are the product of an orderly and logical reasoning process. Findings of the trial court that are supported by the record must be accepted by the reviewing court even if, acting independently, it would have reached a contrary conclusion. This Court applies the same standard of review to the Superior Court's decision.<sup>3</sup>

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<sup>2</sup> *Brady v. Wells Fargo Bank*, 2011 WL 5626626, at \*2 (Del. Super.). See Del. Ct. Com. Pl. Civ. R. 56(e) (providing that affidavit must be responded to by adverse party with specific facts in default of which summary judgment shall be entered against the adverse party).

<sup>3</sup> *Wright v. Platinum Fin. Serv.*, 2007 WL 1850904, at \*2 (citing *Baker v. Connell*, 488 A.2d 1303, 1309 (Del. 1985); *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

(13) Having reviewed this matter carefully, we conclude, as did the Superior Court, that the factual findings of the Court of Common Pleas are supported by the record and are the product of an orderly and logical reasoning process. In the absence of any legal error or abuse of discretion, the judgment of the Superior Court affirming the default judgment of the Court of Common Pleas must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice